

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BRENDA K. HOLDEN,

Plaintiff,

vs.

DARRELL HAYNES; DOE BUSINESS
ENTITIES 1 THROUGH 10,
INCLUSIVE; AND ROE POLICE
OFFICERS 1 THROUGH
20, INCLUSIVE,

Defendants.

NO. CV-13-0068-LRS

**ORDER DENYING MOTION TO REMAND
(ECF NO. 28)**

BEFORE THE COURT is Plaintiff's Expedited Motion For Remand For Lack of Jurisdiction, ECF No. 28, filed on April 7, 2014 and noted without oral argument. Plaintiff moves the Court, pursuant to Fed. R. Civ. P. 12(h)(3), for immediate remand of this action to the Spokane County Superior Court (Cause No. 12-2-04033-2) due to this Court's alleged lack of both diversity jurisdiction and subject matter jurisdiction. Plaintiff bases her motion to remand on the voluntary dismissal of all federal causes of action for which the removal was based and that all remaining claims against the remaining Defendant, Darrell Haynes, rest on Washington state tort law. Additionally,

1 Plaintiff argues that there was never diversity subject matter
2 jurisdiction under 28 U.S.C. §1332(a). Plaintiff claims that because
3 Defendant Haynes is an alien (Canadian citizen), his residency does
4 not factor into a diversity analysis. Plaintiff concludes that
5 because this Court has had minimal involvement in this case and all
6 remaining claims are based on state law, the Court should remand to
7 state court.

8 Defendant Haynes opposes Plaintiff's arguments and motion for
9 remand arguing Plaintiff is in error. At the time Defendant Haynes
10 prepared his response to the instant motion, the Court had not yet
11 granted Plaintiff's request to dismiss her 42 U.S.C. § 1983 claim
12 against Mr. Haynes, thus Defendant argued this court still has federal
13 question jurisdiction under 28 U.S.C. § 1331.

14 Defendant Haynes also asserts that diversity jurisdiction is
15 present because such jurisdiction exists when a resident of one of the
16 United States sues a resident of a foreign country and the amount in
17 dispute is more than \$75,000. Here, Mr. Haynes is a Canadian citizen,
18 and Plaintiff claims damages in excess of \$1 million. Defendant
19 concludes that jurisdiction in this Court is appropriate, and the
20 Court should reject Plaintiff's motion for remand.

21 **A. Brief Summary of Pertinent Facts**

22 The original complaint commenced October 11, 2012 in Spokane
23 County Superior Court and was then removed to federal court on
24 February 14, 2013 under 28 U.S.C. § 1441 as a result of the 42 U.S.C.
25 §1983 claims against the State of Washington. ECF No. 1. There were
26 also 42 U.S.C. § 1983 claims against the State of Washington and
27

1 County of Spokane. ECF No. 1. The removal notice did not mention
2 diversity of the party.

3 Both of those governmental Defendants were voluntarily dismissed
4 by Plaintiff pursuant to Fed. R. Civ. P. 41(a)(2). ECF Nos. 15 and 18.
5 The Court, after Defendant's responsive memorandum was filed, granted
6 Plaintiff's unopposed motions to dismiss certain causes of action
7 against Defendant Haynes on May 8 and May 9, 2014 (ECF Nos. 40, 41),
8 resulting in the elimination of all federal claims in the action.

9 Plaintiff indicates that Defendant Raymar Enterprises &
10 Transportation ("Raymar") was named but never served. ECF No. 2.
11 Plaintiff then moved to voluntarily dismiss Defendant Raymar, which
12 the Court granted on May 9, 2014. ECF No. 41. The remaining non-Doe
13 Defendant in this case, Darrell Haynes, was and is a citizen of
14 Calgary, Alberta, Canada. ECF No. 12. Plaintiff Brenda K. Holden is
15 a resident of State of Washington. ECF No. 1. The alleged torts at
16 issue occurred in Spokane County, State of Washington. ECF No. 1.

17 **B. Analysis**

18 The original complaint, commenced October 11, 2012, was filed in
19 state court. On February 7, 2013 Plaintiff accomplished service of the
20 amended complaint on the Washington State Patrol. Plaintiff's amended
21 complaint alleged a federal cause of action. Specifically, Plaintiff
22 asserted a 42 U.S.C. § 1983 Fourth Amendment claim and claims under 42
23 U.S.C. § 1981. All defendants who had appeared at that time agreed to
24 removal of this action to federal court. Thus, the suit was removed
25 by the Assistant Attorney General pursuant to 28 U.S.C. § 1441 on
26 February 14, 2013 based on federal claims, however, no mention was
27

1 made of diversity in the notice of removal. Although not raised by
2 Defendant Haynes in the briefing, it may have been that the presence
3 of the "Doe Defendants" raised a possible risk of nondiversity. For
4 purposes of removal, though, "the citizenship of defendants sued under
5 fictitious names shall be disregarded." See 28 U.S.C. §1441(b)(1).

6 Plaintiff then filed several motions to dismiss various
7 defendants and eliminate all federal claims. Plaintiff then filed
8 this motion to remand and Defendant Haynes opposes remand now based on
9 diversity.

10 **1. Federal Claim(s) Eliminated-Supplemental Jurisdiction**

11 If a claim "arising under" federal law existed at the time of
12 removal, the federal court has supplemental jurisdiction to adjudicate
13 even though the federal claim has been dropped from the case and only
14 state law claims remain. *Nishimoto v. Federman-Bachrach & Assocs.*,
15 903 F.2d 709, 715 (9th Cir.1990); *Anderson v. Aon Corp.*, 614 F.3d 361,
16 364-65 (7th Cir.2010) (applies to both voluntary and involuntary
17 dismissals). A plaintiff may not compel remand by amending a
18 complaint to eliminate the federal question upon which removal was
19 based. *Sparta Surgical Corp. v. National Ass'n of Securities Dealers,*
20 *Inc.*, 159 F.3d 1209, 1213 (9th Cir. 1998).

21 In deciding whether to dismiss or remand, the court may consider
22 whether plaintiff has engaged in "manipulative tactics"-i.e.,
23 dismissing federal claims after removal in order to get back to state
24 court. "If the plaintiff has attempted to manipulate the forum, the
25 court should take this behavior into account in determining whether
26 the balance of factors to be considered under the pendent jurisdiction
27

1 doctrine support a remand in the case." *Carnegie-Mellon Univ. v.*
2 *Cohill*, 484 U.S. 343, 357 (1988). In any event, a district court's
3 decision to remand remains discretionary and is dependent upon what
4 will best accommodate the values of economy, convenience, fairness and
5 comity. *Harrell v. 20th Century Ins. Co.*, 934 F.2d 203, 205 (9th Cir.
6 1991).

7 **2. Diversity**

8 The district court has no discretion to remand a case after
9 elimination of the federal claim, however, if diversity of citizenship
10 then exists under an amended pleading. A party that has properly
11 removed a case need not amend its removal notice or file a new notice
12 after an amended complaint changes the ground for federal
13 jurisdiction. *Williams v. Costco Wholesale Corp.*, 471 F.3d 975 (9th
14 Cir.2006). Once a case has been properly removed, the district court
15 has jurisdiction over it on all grounds apparent from the complaint,
16 not just those cited in the removal notice. 28 U.S.C.A. § 1446. If a
17 defendant properly removed a state-court civil action on
18 federal-question grounds, based on the presence of a federal claim in
19 plaintiff's original complaint, that defendant is not required to
20 amend its removal notice or file a new notice after the plaintiff
21 filed an amendment to complaint that removed the federal claim(s), but
22 that also made clear that requirements for diversity jurisdiction were
23 satisfied. In the *Costco* case, removal was already perfected under 28
24 U.S.C.A. § 1446(b).

25 The Ninth Circuit in *Costco* explained:

26 " If the original complaint in fact supported
27 federal jurisdiction on both diversity and federal

1 question grounds, Costco was not required to list
2 both grounds in its notice of removal. The civil
3 removal statute, unlike the removal statute for
4 criminal cases, has no requirement that all
5 grounds for removal be listed in the notice.
6 Compare 28 U.S.C. § 1446(b) with id. §
7 1446(c) (2)."

8 *Costco*, 471 F.3d at 976 n.1.

9 The Ninth Circuit further opined in *Costco*:

10 We have long held that post-removal amendments to
11 the pleadings cannot affect whether a case is
12 removable, because the propriety of removal is
13 determined solely on the basis of the pleadings
14 filed in state court. See *Sparta Surgical Corp. v.*
15 *Nat'l Ass'n of Sec. Dealers, Inc.*, 159 F.3d 1209,
16 1213 (9th Cir.1998); *O'Halloran v. Univ. of Wash.*,
17 856 F.2d 1375, 1379 (9th Cir.1988). It follows
18 that a party that has properly removed a case need
19 not amend its removal notice or file a new notice
20 after an amended complaint changes the ground for
21 federal jurisdiction. Because post-removal
22 pleadings have no bearing on whether the removal
23 was proper, there is nothing a defendant can or
24 need do to perfect the removal. See *Yarnevic v.*
25 *Brink's, Inc.*, 102 F.3d 753, 755 (4th Cir.1996).
26 Indeed, the idea of filing a notice of removal in
27 a case that is already pending in federal court,
28 having been properly removed is nonsensical.
After all, "a Supplemental Notice of Removal
would, if granted, have the effect of removing a
case that has already been removed." *Nolan v.*
Boeing Co., 715 F.Supp. 152, 153 n.1
(E.D.La.1989).

471 F.3d at 976-77.

20 In the present case, Plaintiff is a citizen of Washington, and
21 Defendant Haynes is a citizen of Canada, a foreign state. Plaintiff
22 claims damages exceeding a million dollars. Accordingly, this Court
23 has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(2), which
24 reads:

25 (a) The district courts shall have original
26 jurisdiction of all civil actions where the matter
27 in controversy exceeds the sum or value of
28 \$75,000, exclusive of interest and costs, and is

1 between--

2 . . .
3 (2) citizens of a State and citizens or subjects
4 of a foreign state, except that the district
5 courts shall not have original jurisdiction under
6 this subsection of an action between citizens of a
7 State and citizens or subjects of a foreign state
8 who are lawfully admitted for permanent residence
9 in the United States and are domiciled in the same
10 State; ...

11 Once a case has been properly removed, the district court has
12 jurisdiction over it on all grounds apparent from the complaint, not
13 just those cited in the removal notice. See *Brockman v. Merabank*, 40
14 F.3d 1013, 1016 (9th Cir.1994). The Court finds that removal was
15 already perfected in this case and this Court has diversity
16 jurisdiction (the "Doe Defendants" are disregarded) in addition to
17 supplemental jurisdiction. Plaintiff's attempt to manipulate the
18 forum is to no avail.

19 After reviewing the files and records herein, and the Court
20 having been fully advised, it is hereby:

21 **ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion For Remand
22 (**ECF No. 28**), is **DENIED**.

23 **IT IS SO ORDERED.** The District Court Executive is directed to
24 enter this Order.

25 **DATED** this 20th day of May, 2014.

26 **s/Lonny R. Suko**

27 _____
28 LONNY R. SUKO
SENIOR UNITED STATES DISTRICT JUDGE